# A Limited Article V Constitutional Convention?

Opinions by:
Chief Justice Warren Burger
Associate Justice Arthur Goldberg
Retired U. S. District Judge Bruce Van Sickle
Nine Nationally Reputed Professors of Law

# A CONSTITUTIONAL CONVENTION

- **CANNOT BE LIMITED TO A SINGLE ISSUE**
- **CAN BECOME A RUNAWAY**

See the opinions of two former Supreme Court Justices, a retired U. S. District Court Judge, and nine nationally reputed professors of law

## Opinions of:

Chief Justice Warren Burger
Associate Justice Arthur Goldberg
Retired U. S. District Judge Bruce Van Sickle
Rex Lee, Professor of Law and President of Brigham Young University
Gerald Gunther, William Cromwell Professor of Law, Stanford University
Professor Neil Cogan, School of Law, Southern Methodist University
Charles L. Black, Jr., Sterling Professor of Law, Yale University
Charles Wright, School of Law, The University of Texas at Austin
Professor Christopher Brown, University of Maryland School of Law
Jefferson Fordham, College of Law, University of Utah
Lawrence Tribe, Harvard University Law School
Charles Rice, Professor of Law, Notre Dame Law School

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
CHIEF JUSTICE BURGER
RETIRED

June 22, 1988

Dear Phyllis:

I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly replied that such a convention would be a grand waste of time.

I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Our 1787 Constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,

WEB

Mrs. Phyllis Schlafly
68 Fairmount
Alton, IL 62002

1

# Steer clear of constitutional convention

By ARTHUR J. GOLDBERG

As we look forward to celebrating the bicentennial of the Constitution, a few people have asked, "Why not another constitutional convention?"

I would respond by saying that one of the most serious problems Article V poses is a runaway convention. There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights. Moreover, the absence of any mechanism to ensure representative selection of delegates could put a runaway convention in the hands of single-issue groups whose self-interest may be contrary to our national well-being.

A constitutional convention could lead to sharp confrontations between Congress and the states. For example, Congress may frustrate the states by treating some state convention applications as invalid, or by insisting on particular parliamentary rules for a convention, or by mandating a restricted convention agenda. If a convention did run away, Congress might decline to forward to the states for ratification those proposed amendments not within the convention's original mandate.

Ultimately, the courts would be called upon to decide these matters. This raises unprecedented problems. If every disgruntled convention delegate, member of Congress, state legislator or concerned citizen could sue at any time, a convention could mire the federal and state governments in a debilitating web of lawsuits. Could government thus preoccupied with a convention meet the needs of their citizens and the country as a whole?

If the issues are not reviewable by the courts, then the convention would take place outside our system of checks and balances and the dangers of a runaway convention increase. If the convention issues are reviewable, then serious enforcement problems arise.

Proponents for a convention offer assurances that it can be limited to a single issue by saying the state legislatures have called for a convention for the "sole and express purpose" of drafting a specific amendment, particularly the balanced budget amendment.

In response, they should be reminded that the convention of 1787 was called "for the sole and express purpose of revising the Articles of Confederation." As we know, that convention, in these special and unique circumstances, discarded the Articles and drafted the U.S. Constitution, despite its limited mandate.

History has established that the Philadelphia Convention was a success, but it cannot be denied that it broke every restraint intended to limit its power and agenda. Logic therefore compels one conclusion: Any claim that the Congress could, by statute, limit a convention's agenda is pure speculation, and any attempt at limiting the agenda would almost certainly be unenforceable. It would create a sense of security where none exists, and it would project a false image of unity.

Opposition to a constitutional convention at this point in our history does not indicate a distrust of the American public, but in fact recognizes the potential for mischief. We have all read about the various plans being considered for constitutional change. Could this nation tolerate the simultaneous consideration of a parliamentary system, returning to the gold standard, gun control, ERA, school prayer, abortion vs. right to life and anti-public interest laws?

As individuals, we may well disagree on the merits of particular issues that would likely be proposed as amendments to the Constitution; however, it is my firm belief that no single issue or combination of issues is so important as to warrant jeopardizing our entire constitutional system of governance at this point of our history, particularly since Congress and the Supreme Court are empowered to deal with these matters.

James Madison, the father of our Constitution, recognized the perils inherent in a second constitutional convention when he said an Article V national convention would "give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already heated too much men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first convention which assembled under every propitious circumstance, I would tremble for the result of the second."

Let's turn away from this risky business of a convention, and focus on the enduring inspiration of our Constitution.

The bicentennial should be an occasion of celebrating that magnificent document. It is our basic law; our inspiration and hope, the opinion of our minds and spirit; it is our defense and protection, our teacher and our continuous example in the quest for equality, dignity and opportunity for all people in this nation. It is an instrument of practical and viable government and a declaration of faith — faith in the spirit of liberty and freedom.

## In Response

*Former U.S. Supreme Court Justice Arthur J. Goldberg, a member of the advisory board of Citizens to Protect the Constitution, wrote this article for The Herald in response to an article by Arthur S. Miller, "Why not another constitutional convention?" (Viewpoint, July 6).*

# HAMLINE LAW REVIEW

LAWFUL AND PEACEFUL REVOLUTION: ARTICLE V AND CONGRESS' PRESENT DUTY TO CALL A CONVENTION FOR PROPOSING AMENDMENTS

*The Honorable Bruce M. Van Sickle*
*Lynn M. Boughey*

George C. Detweiler
P. O. Box 771
Twin Falls, ID 83303

VOLUME 14 FALL 1990 NUMBER 1

convention. Congress cannot thwart amendments proposed by a convention by refusing to designate whether ratification will be by the state legislature or by state conventions. Such an attempt would be such a naked assertion of unconstitutional power that it scarcely deserves serious discussion. Nonetheless, the proposed legislation described above[241] amazingly provides for this thinly veiled veto power. The enactment and use of this proposal would completely defeat the purpose of Article V, and would constitute nothing less than the nullification of a constitutional provision by legislative fiat. If the convention proposes one or more amendments, Congress then is obliged under Article V to designate the mode of ratification. Article V cannot be read as granting Congress the authority to prevent, by any means, the forwarding of proposed amendments to the states for their review.

## IV. The Inability of States to Limit an Article V Convention

Article V provides to the states the power to apply for a convention for proposing amendments, and the power to ratify amendments proposed either by Congress or by the convention process. As shown in this article, the plain language of Article V and the history of its drafting demonstrate that a convention for proposing amendments cannot be limited to a single issue. The states, like Congress, have no authority to limit the scope of the convention to a single topic. As such, a state does not have the power to limit a constitutional convention to particular topics by limiting the efficacy of its application for a convention called to consider only one topic.[242] A state does not have the ability to defeat its application by claiming viability of the application only if the convention accedes to that state's improper demand that only one topic be addressed at the convention. The states have no authority to place such an unconstitutional demand in the application. When a state applies under Article V for the calling of a convention for proposing amendments it knows from the language of Article V that it cannot inhibit the scope of the convention. It is a convention for proposing *amendments*. The clear language of the Article, combined with the historic fact that the selection of the plural form of the word "amendments" was a deliberate act, leads steadfastly to the inescapable conclusion that a state cannot limit the convention, or its application, to one

241. *See supra* text accompanying notes 212-23.
242. *See supra* text accompanying notes 172-78.

3a

topic.[243]

On the other hand, prior to reaching the necessary applications from two-thirds of the states, a state presumably has the ability to rescind its application or to include a time limit on the effectiveness of its application. Moreover, a withdrawal of an application after reaching the necessary two-thirds mark cannot be effective because once that mark is reached the terms of Article V trigger the requirement of Congress to call a convention. Once the final legislative vote applying for a convention for proposing amendments has been taken, the Constitution obliges Congress to call a convention, and no subsequent act can vitiate that obligation. Thus, permitting a state to rescind its application after the two-thirds has been met would be contrary to Article V because it would have the disastrous consequence of giving each applying state a veto power over the convention after it was already required to be called.

## V. Counting the Pending Applications

In determining the number of states that have pending applications for a convention for proposing amendments to the Constitution, several points must be recognized. First, the mere passage of time does not defeat the efficacy of an application. The time lapse between the first application and the thirty-fourth application is not material. Second, there is nothing in Article V that supports a construction of contemporaneousness. According to the text of Article V, Congress must call a convention upon the application of two-thirds of the state legislatures. There is nothing in the language of Article V that provides a time limit on the applications. An application, once made, continues unless it is rescinded or reaches its own termination date.

It is true that a contemporaneousness requirement has some intuitive appeal, based on the sense that the framers inserted the two-thirds requirement so that a convention would be called only when there was a substantial nationwide consensus that a convention was needed. If

243. Although Congress may fix reasonable time limits relating to the ratification of its own proposed amendments, Dillion v. Glass, 256 U.S. 368, 325-76 (1921); Coleman v. Miller, 307 U.S. 433, 452 (1939), there is nothing in the text of Article V or the intent of the framers that would support a limitation being placed upon the states relating to time limits for applying for an Article V convention for proposing amendments. This point can also be shown by the analogous Supreme Court decision in Leser v. Garnett, 258 U.S. 130 (1922), in which the Leser Court points out that the governing law relating to the amendment process is Article V of the Constitution, and that Article V necessarily "transcends any limitation sought to be imposed by the people of a state." *Id.* at 137.

BRIGHAM YOUNG
UNIVERSITY

REX E. LEE
PRESIDENT

THE GLORY OF GOD
IS INTELLIGENCE

December 18, 1989

Representative Reese Hunter
4577 Wellington Street
Salt Lake City, UT 84117

Dear Mr. Hunter:

This is in response to your letter of December 12 in which you asked for my opinion concerning whether under Article V of the United States Constitution, a constitutional convention called to consider a particular issue could be limited either by congressional directive or otherwise to that single issue.

The only safe statement that could be made on this subject is that no one knows, but the only relevant precedent would indicate that the convention could not be so limited. Anyone who purports to express a definitive view on this subject is either deluded or deluding. As a result, in determining the steps you should take as a responsible representative of the people of Utah, you and other members of the legislature should realize that the risks are very real that (1) just as happened in 1787, the convention might not in fact limit itself as instructed by Congress and (2) the convention's forays into areas forbidden them by Congress might eventually be upheld.

In short, if the question is whether a runaway convention is assured, the answer is no, but if the question is whether it is a real and serious possibility, the answer is yes. In our history we have had only one experience with a constitutional convention, and while the end result was good, the convention itself was definitely a runaway.

I hope this is helpful to you.

Sincerely,

Rex E. Lee

REL:jn

D-346 ASB
BRIGHAM YOUNG UNIVERSITY
PROVO, UTAH 84602
(801) 378-2521

9

STANFORD LAW SCHOOL

November 16, 1991

Personal Statement, Professor Gerald Gunther

My major concern is with constitutional processes. The convention method of amending the Constitution is a legitimate one under Article V: it is an appropriate method for proposing amendments when two-thirds of the state legislatures, with appropriate awareness of and deliberation about the uncertainties and risks of the convention route, choose to apply to Congress to call a convention. But the ongoing balanced budget convention campaign has not been a responsible invocation of that method. Instead, between 1976 and 1979, about half of the state legislatures adopted applications without any serious attention to the method they were using, in an atmosphere permeated with wholly unfounded assurances by those who lobbied for the convention route that a constitutional convention could easily and effectively be limited to consideration of a single issue, the budget issue. In my view, a convention cannot be effectively limited. But whether or not I am right, it is entirely clear that we have never tried the convention route, that scholars are divided about what, if any, limitations can be imposed on a convention, and that the assurances about the ease with which a single issue convention can be had are unsupportable assurances.

I find it impossible to believe that it is deliberate, conscientious constitution-making to engage in a process that began in the 1970s with a mix of inattention, ignorance and narrow, single-issue focus; that might well expand to a broader focus during the campaigns for electing convention delegates; and that would not blossom fully into a potentially broad constitutional revision process until the convention delegates are elected and meet. There is no denying the fact that, if the present balanced budget convention campaign succeeds in eliciting the necessary applications from 34 state legislatures, the convention call will be triggered by inadequately considered state applications, for the vast preponderance of the legislative applications rest on an entire absence of consideration of the risks of a convention route. In my view, that constitutes a palpable misuse of the Article V convention process. The convention route, as I have said, is legitimate when deliberately and knowingly invoked. The ongoing campaign, by contrast, has produced a situation where inattentive, ignorant, at times cynically manipulated state legislative action threatens to trigger a congressional convention call. I cannot support so irresponsible an invocation of constitutional processes.

Gerald Gunther

*Gerald Gunther,*
*William Nelson Cromwell Professor of Law*

*Crown Quadrangle*
*Stanford, California*
*94305*


Statement of Professor Neil H. Cogan

I agree almost entirely with the foregoing memorandum.

My understanding of the Federal Convention is that it is a general convention; that neither the Congress nor the States may limit the amendments to be considered and proposed by the Convention; that the Convention may be controlled in subject matter only by itself and by the people, the latter through the ratification process. My understanding is further that the States and Congress may suggest amendments and the people give instructions, but that such suggestions and instructions are not binding. Thus, I believe that should the Congress receive thirty-four applications that clearly and convincingly are read as applications for a general convention (whether or not accompanied by suggested amendments), then Congress must call a Federal Convention.

While it is plainly appropriate to examine the traditional historical sources -- text, debates, papers and pamphlets, correspondence and diaries -- it is plain too that these sources must be examined, and other sources chosen, within the context of our evolving theory of government. As I understand that theory, the Federal Convention is the people by delegates assembled, convened to consider and possibly propose changes in our fundamental structures and relationships -- indeed, in our theory of government itself --, and controlled only by the people and certainly not by other bodies the tasks and views of which may disqualify them from fundamental change and which themselves may be the subjects and objects of fundamental change.

SCHOOL OF LAW
SOUTHERN METHODIST UNIVERSITY / DALLAS, TEXAS 75275

SCHOOL OF LAW
THE UNIVERSITY OF TEXAS AT AUSTIN

727 East 26th Street · Austin, Texas 78705 · (512) 471-5151



April 16, 1987

The Honorable Clint Hackney
House of Representatives
Box 2910
Austin, Texas 78769

Dear Representative Hackney:

The Law Library has provided me with a copy of H.C.R. 69, which you introduced in the Legislature in order to have the Legislature rescind the petition by the 65th Legislature asking Congress either to adopt a balanced budget amendment or to call a constitutional convention for the purpose of proposing such an amendment. I enthusiastically support your resolution.

A balanced budget is something devoutly to be wished. I doubt very much, however, whether amending the Constitution is the way to get it. I feel quite certain that even opening the door to the possibility of a constitutional convention would be a tragedy for the country.

We celebrate this year the Bicentennial of the Constitution of the United States. For 200 years it has served us well. I start with a strong presumption against any amendment to it and with an absolutely conclusive belief that we should not have a constitutional convention. Your resolution correctly says that scholarly legal opinion is divided on the potential scope of a constitutional convention's deliberations. I think that is an accurate statement. My own belief, however, is that a constitutional convention cannot be confined to a particular subject, and that anything it adopts and that the states ratify will be valid and will take effect. We have only one precedent, the Convention in Philadelphia in 1787. It was summoned "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several Legislatures such alterations and provisions therein." From the very beginning it did not feel confined by the call and gave us a totally new Constitution that completely replaced the Articles of Confederation. I see no reason to believe that a constitutional convention 200 years later could be more narrowly circumscribed.

11

We will have a balanced budget when we have a President and Congress with the determination to adopt such a budget. I hope that day comes soon, but I hope even more that the day never comes when the country is exposed to the divisiveness and the possible untoward results of a constitutional convention.

I hope you are successful in persuading your colleagues in the House and Senate to adopt H.C.R. 69.

Sincerely,

Charles Alan Wright

## Amendment by National Constitutional Convention: A Letter to a Senator

**Excerpts from a letter to a senator by Charles L. Black , Jr, Sterling Professor of Law, Yale University (1979)**

### *The Nineteenth Century Record*

In my earlier letter to Congressman Celler, described and cited above, I said that the notion that state legislatures may limit the subject matter in their applications for conventions was "nothing but a child of the twentieth century." I used Brickfield's tables, there cited, to establish that, until around the turn of the century, that through all the turmoil until that time, nothing but general applications were transmitted to Congress by the states. This, if true, is very important because it shows that ***for more than a century after the Constitution went into effect***, this Article V provision was not generally understood as empowering the states to set the agenda of any convention they applied for, or to apply for a convention so limited.

Think what that means. Through the controversies over the Alien and Sedition Laws, over the Embargo, over the "internal improvements" bills, over the Bank of the United States, over the early fugitive-slave laws, *not one single legislature* acted as though it thought it had power to force Congress to call a convention limited to one of these topics. It did not even occur to Kentucky and Virginia when they were busy with "interposition" against what they felt to be unconstitutional actions of Congress, to go at the matter via a limited Article V convention...

Let me add one final word of crucial importance: I have argued here, as in my Celler letter, for the conclusion that an Article V convention must be entirely general, and that a state application asking for something other than that is void. I fully believe in this view.

But it would be quite sufficient for now to hold to the far more modest proposition that, at least an application "for the purpose of proposing" a minutely described amendment is a mere travesty of grown-up constitutionalism, and indeed of the very word "propose," as applied to a solemnly assembled national constitutional convention . Assembling a convention for such a ministerial or rigorously channeled function is a bit of foolishness one can by no stretch of fancy think the Constitution calls for.

For Black's complete desertion go to: http://digitalcommons.law.yale.edu/fss_papers

UNIVERSITY OF MARYLAND SCHOOL OF LAW
500 WEST BALTIMORE STREET • BALTIMORE, MARYLAND 21201-1786

November 25, 1991

STATEMENT OF PROFESSOR CHRISTOPHER BROWN

The most alarming aspect of the fact that 32 of the necessary 34 states have called for a constitutional convention is the threat this development poses to a system that has worked so well for nearly 200 years. In spite of the fact that 3 states have rescinded their calls for a constitutional convention in recent years, convention supporters have clearly stated their intent to lull the final 2 states into passing convention requests, thereby forcing the U.S. Supreme Court into either upholding the state rescissions or mandating the first federal constitutional convention since 1787. We are on the brink of encountering the risks of radical surgery at a time when the patient is showing no unusual signs of difficulty. If this country were faced with an uncontrollable constitutional crisis, such risks might be necessary; but surely they have no place in the relatively placid state of present day constitutional affairs. Now is not the time for the intrusion of a fourth unknown power into our tripartite system of government.

After 34 states have issued their call, Congress must call "a convention for proposing amendments." In my view the plurality of "amendments" opens the door to constitutional change far beyond merely requiring a balanced federal budget. The appropriate scope of a convention's agenda is but one of numerous uncertainties now looming on the horizon: Need petitions be uniform, limited or general? By whom and in what proportion are the delegates to be chosen? Who will finance the convention? What role could the judiciary play in resolving these problems? The resolution of these issues would inevitably embroil the government in prolonged discord.

Assembling a convention and thereby encountering and attempting to resolve these questions would surely have a major effect upon the ongoing operations of our government. Unlike the threats posed by Richard Nixon's near impeachment, the convening of a convention could not necessarily be compromised to avoid disaster. It would surely create a major distraction to ordinary concerns, imposing a disabling effect on this country's domestic and foreign policies. Only the existence of an actual breakdown in our existing governing structure warrants such a risk-prone tinkering with out constitutional underpinnings. Now is not the time to take such chances.

THE UNIVERSITY OF UTAH

COLLEGE OF LAW
SALT LAKE CITY, UTAH 84112

November 29, 1983

I here offer brief comments of my own. The proponents are trying to blend the two methods of constitutional change made available by Article Five. They are saying that they do not trust a convention, so they propose to resort to such a body. That is incongruous. They may not have it both ways.

It is to be noted that in the American tradition a constitutional convention is not a constituent assembly -- a body competent both to draft and to adopt a constitution. In such an assembly is reposed sovereignty. The state antecedents of the Federal Constitution of 1787 all contemplated voter ratification. In this context it is not unreasonable to conclude that the members of the 1787 federal convention perceived such a convention to be competent to have the widest range of action in proposing amendments. Of course the very text confirms this by use of the plural "amendments." A convention might propose a single amendment but it would clearly have a wider range.

If what proponents desire is a particular change, the state legislative initiation method is adapted to the purpose. If more general review and possible changes are contemplated the convention method is plainly indicated.

Jefferson B. Fordham

HARVARD UNIVERSITY
LAW SCHOOL

LAURENCE H. TRIBE
*Tyler Professor of Constitutional Law*

GRISWOLD HALL 307
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-4621

The primary threat posed by an Article V Convention is that of a confrontation between Congress and such a Convention. Upon Congress devolves the duty of calling a Convention on application of the legislatures of two-thirds of the states, and approving and transmitting to the states for ratification the text of any amendment or amendments agreed upon by the convention. The discretion with which Congress may discharge this duty is pregnant with danger even under the most salutary conditions.

In the event of a dispute between Congress and the Convention over the congressional role in permitting the Convention to proceed, the Supreme Court would almost certainly be asked to serve as referee. Because the Court might feel obliged to protect the interests of the states in the amendment process, it cannot be assumed that the Court would automatically decline to become involved on the ground that the dispute raised a nonjusticiable political question, even if Congress sought to delegate resolution of such a dispute to itself. Depending upon the political strength of the parties to the dispute, a decision to abstain would amount to a judgment for one side or the other. Like an official judgment on the merits, such a practical resolution of the controversy would leave the Court an enemy either of Congress or of the Convention and the states that brought it into being.

A decision upholding against challenge by one or more states an action taken by Congress under Article V would be poorly received by the states involved. Truly disastrous, however, would be any result of a confrontation between the Supreme Court and the states over the validity of an amendment proposed by their Convention. Yet the convention process could, quite imaginably, give rise to judicial challenges that would cast the states into just such a conflict with the Supreme Court -- despite congressional attempts to exclude such disputes from the Court's purview.

At a minimum, therefore, the federal judiciary, including the Supreme Court, will have to resolve the inevitable disputes over which branch and level of government may be entrusted to decide each of the many questions left open by Article V.

The only possible way to circumvent the problematic prospect of such judicial resolution is to avoid use of the Convention device altogether until its reach has been authoritatively clarified in the only manner that could yield definitive answers without embroiling the federal judiciary in the quest: through an amendment to Article V itself.

Notre Dame Law School
Notre Dame, Indiana 46556

Direct Dial Number
219-239-5667

December 7, 1987

Mr. Don Fotheringham
Save the Constitution Committee
Box 4582
Boise, ID 83704

Dear Mr. Fotheringham:

You have asked my opinion the effort to rescind the Idaho legislature's approval of the proposed constitutional amendment to require a balanced federal budget. It would be within the power of the legislature, in my opinion, to rescind its approval. The courts could possibly regard the efficacy of that rescission as a political question committed by the Constitution to the discretion of Congress. Nevertheless, even if it were not judicially enforceable, such a rescission would be within the power of the Idaho legislature and it ought to be regarded by Congress as binding.

On the merits of the rescission, I support it for the reasons stated in the enclosed article from the April 22, 1987, issue of The New American.

I hope this will be helpful. If there is any further information I can provide, please let me know.

Sincerely,

Charles E. Rice
Professor of Law

Enclosure

8